

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE MATTER OF: PROTEST

BROCK CONTRACT SERVICES  
OF S.C., INC.

vs.

THE SOUTH CAROLINA  
CRIMINAL JUSTICE ACADEMY

GENERAL CONSTRUCTION – CARPET &  
FLOORING SYSTEMS  
STATE PROJECT N20-D016-LC &

&

BROCK CONTRACT SERVICES  
OF S.C., INC.

vs.

THE SOUTH CAROLINA  
DEPARTMENT OF MOTOR VEHICLES

GENERAL CONSTRUCTION – CARPET &  
FLOORING SYSTEMS  
STATE PROJECT R40-D033-LC

BEFORE THE CHIEF PROCUREMENT  
OFFICER FOR CONSTRUCTION

DISMISSAL

CASE NO. 2009-002

POSTING DATE:  
AUGUST 12, 2008

This matter is before the Chief Procurement Officer for Construction (“CPOC”) pursuant to a request from Brock Contract Services of S.C., Inc., under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review on two identical solicitations for indefinite delivery of carpet and flooring systems for the South Carolina Criminal Justice Academy and South Carolina Department of Motor Vehicles (hereinafter collectively referred to as “Agencies”). [A copy of Brock’s protest is attached as Exhibit “A”] Pursuant to S.C. Code Ann. §11-35-4210(4), the CPOC conducted an administrative review without a hearing. This decision is based on that review and the applicable law and precedents.

#### **NATURE OF THE PROTEST**

On June 23, 2008, the Agencies, issued invitations for bids to provide indefinite delivery of construction services to furnish, install, and repair floor systems and carpet. Under both invitations, Russell Long, of the South Carolina Department of Public Safety, Capitol Improvements Office,

Improvements Office, acted as the procurement officer on behalf of the Agencies. Mr. Long's office received and opened bids on July 17, 2008. Brock was not one of the bidders. On July 22, 2008, Mr. Long's office posted Notices of Intent to Award Indefinite Delivery Contracts. On August 4, 2008, Brock filed its protest with the CPOC.

Brock protests the Agencies' solicitations because of the requirement that all bidders possess a General Contractor's Specialty License, with an Interior Renovations sub-classification. Brock asserts that flooring contractors are not required to be general contractors and that this requirement unfairly eliminates Brock and other unlicensed flooring contractors from bidding on the work.<sup>1</sup> Brock further protests a requirement in the solicitation that bidders use their own forces to perform any work awarded under the indefinite delivery contracts arguing it was unfair to eliminate subcontracting and its ability to subcontract for such work.

### **CPOC FINDINGS**

A protest of a solicitation must be filed with the CPOC within fifteen days of the issuance of the invitation for bids. S.C. Code Ann. §§ 11-35-4210(1)(a) and 11-35-4210(2)(a). The Agencies issued their Invitations for Bids on June 23, 2008.<sup>2</sup> The fifteenth day after the Invitations for Bids were issued was July 8, 2008. Brock filed its protest of the solicitations on August 4, 2008, almost one month after the deadline for doing so.

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<sup>1</sup> S.C. Code Ann. § 40-11-410(4)(c) requires a contractor performing floor installation, other than carpeting, in excess of \$5,000.00 to possess a General Contractor's Specialty License, with an Interior Renovations sub-classification. A search of the Contractor Licensing Board's on line records indicates that Brock at one time possessed such a license but that its license expired in 2006.

<sup>2</sup> The Agencies did issue identical amendments to their solicitations on July 9, 2008. Each amendment inserted the number 60 in the space on the bid form for the number of days the bidder would honor its bid. Since this amendment is not the subject matter of the protest, it does not affect the date by which Brock had to file its protest with the CPOC and even if it did, Brock's protest would still be untimely.

**DECISION**

It is the decision of the Chief Procurement Officer for Construction that Brock's protest of the solicitation was not filed within the time required by S.C. Code Ann. § 11-35-4210(1)(a).

For the foregoing reason, Protest Dismissed.

  
John St. C. White  
Chief Procurement Officer for Construction

  
Date

Columbia, South Carolina

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

**FILE BY CLOSE OF BUSINESS:** Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

**FILING FEE:** Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

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**From:** Protest-OSE  
**Sent:** Monday, August 04, 2008 11:51 AM  
**To:** White, John; Langdon, Rachel  
**Subject:** FW: PROTEST - SOLICITATIONS:R40-DO33-LC AND R20-DO16-LC IDC CONTRACT

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From: Rebecca Cates[SMTP:RCATES@BROCKCONTRACT.COM]  
Sent: Monday, August 04, 2008 11:51:04 AM  
To: Protest-OSE  
Cc: jackmills1@hotmail.com  
Subject: FW: PROTEST - SOLICITATIONS:R40-DO33-LC AND R20-DO16-LC IDC CONTRACT Auto forwarded by a Rule

-----Original Message-----

From: Rebecca Cates [mailto:rcates@brockcontract.com]  
Sent: Monday, August 04, 2008 10:54 AM  
To: 'OSE@MMO.SC.GOV'; 'htrotter@rplfirm.com'  
Cc: 'jackmills@hotmail.com'  
Subject: PROTEST - SOLICITATIONS:R40-DO33-LC AND R20-DO16-LC IDC CONTRACT

PROTEST

RE: Solicitations  
R40 D033 -LC  
R20 DO16 -LC

Brock Contract Services of S.C. is filing an official protest of the above listed solicitations due to way the offers were written. The offers eliminate us and other flooring contractors because we are not required to be general contractors.

Most general contractors bid projects, then use flooring contractors to install their products. This is a universal method. Brock Contract Services is totally qualified to provide all types of flooring, post a bond and perform. We have contracts with The University of S.C. and many other major builders and developers.

The DMV and Criminal Justice Divisions are looking for qualified flooring contractors. Why are these required to be GC's? If work, other than flooring, is required the GC's on the IDC contracts can perform it.

These solicitations also required the flooring be performed by the bidders own forces. I am told this eliminates the use of sub-contractors. I question that the contractors who are successfully awarded this work would be able to complete it with only their company employees. Sub-contracting certain items is the way of the world. It is unfair to eliminate it.

These two solicitations should be issued to qualified flooring contractors who are bonded, qualified, and not required to be GC's. We did not bid on these because we were unfairly eliminated by the solicitation. We were not able to obtain a GC rating prior to the bid date due to the time involved.

I trust this bid will be reviewed and reissued in a manner that is fair to small businesses that provide flooring services.

Services of S.C., Inc.

Brock Contract

Jack M. Mills  
President